

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ERVIN R. CAYAX and LUZ A. VILLADA-
ECHEVERRI, his spouse,

Civil Action No.
18-17135

Plaintiffs,

vs.

KIA MOTORS AMERICA, INC. and ABC CORP.
1-10,

Defendants.

NOTICE OF REMOVAL

Defendant, KIA MOTORS AMERICA, INC., files this Notice of Removal of this case from the Superior Court of New Jersey, Law Division, Morris County, where it is now pending, to the United States District Court for the District of New Jersey. In support thereof, Defendant, KIA MOTORS AMERICA, INC., states the following:

1. Pursuant to Rule 10.1(a) of the Local Civil Rules, the addresses of the named parties are as follows:
 - a. Plaintiffs, ERVIN R. CAYAX and LUZ A. VILLADA-ECHEVERRI, upon information and belief, based upon the Complaint, are individuals who reside in Morris County, New Jersey. Plaintiffs are represented in this matter by Robert D. Kobin, Esq. and the law firm NUSBAUM, STEIN, GOLDSTEIN, BRONSTEIN & KRON, P.A., 66 Sunset Strip, Suite 205, Succasunna, New Jersey 07876.
 - b. Defendant, KIA MOTORS AMERICA, INC., is a California corporation with its principal place of business in Irvine, California. Defendant, KIA MOTORS AMERICA, INC., is represented in this matter, by Peter J. Fazio, Esq. of

AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP, 600 Third Avenue, New York, New York 10016.

2. On October 8, 2018, plaintiffs commenced an action captioned ERVIN R. CAYAX¹ and LUZ A. VILLADA-ECHEVERRI, his spouse, Plaintiffs, vs. KIA MOTORS AMERICA, INC. and ABC CORP. 1-10, Defendants, Docket No. MRS-L-001973-18, in the Superior Court of New Jersey, Law Division, Morris County. A copy of the Complaint is attached hereto as **EXHIBIT “A.”**

3. Plaintiffs have brought one count against the defendant that appears to be based upon negligence claims under theories of products liability, implied warranty of merchantability and/or implied warranty of fitness for a particular purpose, relating to a motor vehicle accident which occurred on October 7, 2016, which allegedly caused injury to plaintiff, ERVIN R. CAYAX. **Id. at pages 2-4.** Plaintiffs have brought a second count against the defendant that is a derivative claim for alleged injuries sustained plaintiff, LUZ A. VILLADA-ECHEVERRI, the spouse of ERVIN R. CAYAX. **Id. at page 4.**

4. On or about November 7, 2018, plaintiffs served Defendant, KIA MOTORS AMERICA, INC., with the Summons and Complaint, by sending it via certified mail to The Corporation Trust Company 820 Bear Tavern Road, 3rd Floor, West Trenton, New Jersey 08628, which was delivered on November 13, 2018.

5. All properly joined and served defendants consent to this removal.

BASIS FOR REMOVAL

6. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(a).

7. Plaintiffs are citizens of the State of New Jersey. **See EXHIBIT “A” at page 1.**

¹ This is the caption as set forth in the Complaint. However, the Summons and letter which accompanied the Summons and Complaint, state that plaintiff’s name is “Ervin R. Cayas.”

8. Contrary to the unsupported statement in the Complaint about a “principal address,” Defendant, KIA MOTORS AMERICA, INC., is a California corporation with its principal place of business in Irvine, California.

9. Plaintiffs and Defendant are completely diverse, and Defendant is not a forum defendant. Therefore, the citizenship element of diversity jurisdiction for the purpose of removal is satisfied.

10. The Complaint does not allege an amount in controversy. However, on December 10, 2018, the undersigned spoke with counsel for plaintiffs, Robert D. Kobin, Esq., who certified that the amount in controversy far exceeds \$75,000. As such, the amount in controversy element of diversity jurisdiction for the purpose of removal is satisfied.

VENUE AND TIMELINESS

11. 28 U.S.C. § 1441 provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

12. The United States District Court for the District of New Jersey is the district embracing the place in which the state court action is pending. *See* 28 U.S.C. § 1446(a).

13. Pursuant to 28 U.S.C. § 1446(b)(1), “the notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.”

14. Counsel for this defendant filed the instant Notice of Removal within thirty (30) days of service of the Summons and Complaint.

REMOVAL PROPERLY FILED

15. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders from the State Court Action that were served upon the Defendant are attached hereto as **EXHIBIT “A.”**

16. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal has been filed in the Superior Court of New Jersey, Law Division, Morris County, and has been served on all parties.

Dated: December 12, 2018

Respectfully submitted,

s/ Peter J. Fazio

BY: Peter J. Fazio (PJF 1211)
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